

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,684,138: PAVERCAT  
Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC., )  
 )  
 )  
Petitioner, )  
v. )  
 )  
PAVE TECH, INC., )  
 )  
 )  
Registrant. )

**TTAB**

Cancellation No. 92041776

<p style="text-align: center;"><b>CERTIFICATE OF EXPRESS MAILING</b></p> <p>I hereby certify that on <u>6/24/05</u> this correspondence is being deposited with the United States Postal Service, "Express Mail Post Office to Addressee" service under 37 C.F.R. §2.198 in an envelope addressed to: United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451.</p> <p>Express Mail mailing number: <u>EY 619970710 US</u></p> <p>By: <u>Michele M. Jabs</u> Michele M. Jabs</p>
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**REGISTRANT'S BRIEF IN OPPOSITION TO PETITIONER'S  
MOTION FOR EXTENSION OF TESTIMONY PERIODS**

On June 6, 2005, Petitioner filed a Motion to request a 45-day extension of the testimony period in the above-identified Cancellation action "to allow the preparation for deposition of its testimony witness, Mr. Kurt Tisdale, and the taking of his deposition." Petitioner's Motion at 1. Registrant hereby opposes this Motion, and responds as follows.

The above-identified Cancellation action has been pending since March 22, 2003. By a consented motion of the parties, the present testimony periods in the above-identified action were set by the Trademark Trial and Appeal Board on March 8, 2005. These testimony periods allowed Petitioner until June 13, 2005 to submit testimony materials in connection with this case. Accordingly, Petitioner has had adequate time to prepare for taking testimony depositions, and has specifically had over three (3) months' notice of its deadline to prepare its witnesses for deposition, take any appropriate depositions and/or submit any appropriate Notices of Reliance.



06-24-2005

Petitioner now asserts, just days before the close of its testimony period, that it needs additional time to prepare its witness for deposition and submit Notices of Reliance. The basis for this extension request appears to be that Petitioner's witness is a very busy man.

Registrant wholly rejects the bases Petitioner relies upon in asking the Board to delay this matter further, and asserts that Petitioner has been negligent in failing to take its testimony deposition(s) or submitting any Notices of Reliance. As Petitioner has had months to prepare for its testimony period, busy business schedules do not qualify as good cause for extensions of time. Not only did Petitioner have adequate time to prepare for and take testimony deposition(s), but Petitioner has not established why, in a company of its size, there is only one possible witness, Mr. Kurt Tisdale, who can provide relevant testimony on its behalf.

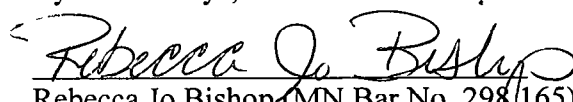
Even if Mr. Tisdale's busy travel itinerary qualifies as good cause for extending the time to take his testimony deposition, Petitioner has failed to provide any justification for its failure to submit Notices of Reliance within the designated testimony period.

Accordingly, Registrant respectfully requests that Petitioner's Motion for Extension of Testimony Periods be denied, and Petitioner be prevented from submitting any untimely materials. In the alternative, if the Board determines that Petitioner has provided good cause for an extension as to the testimony of Mr. Tisdale, Registrant respectfully requests that Petitioner's Motion be denied in part, as to the further submission of any Notices of Reliance.

Respectfully submitted,

**PAVE TECH, INC.**

By its attorneys,

  
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Dated: June 24, 2005

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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2005, a true and complete copy of the foregoing  
REGISTRANT'S BRIEF IN OPPOSITION TO PETITIONER'S MOTION FOR EXTENSION  
OF TESTIMONY PERIODS was served by mailing a copy via First Class Mail, postage prepaid,  
to:

Edward G. Wierzbicki, and  
Mary E. Innis  
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Date: June 24, 2005



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